

OFFICE OF CORPORATION COUNSEL

Milwaukee County

WILLIAM J. DOMINA
Corporation Counsel

TIMOTHY R. SCHOEWE
MARY ANN GRIMES
ROBERT E. ANDREWS
Deputy Corporation
Counsel

LOUIS EDWARD ELDER
JOHN F. JORGENSEN
MARY ELLEN POULOS
MARK A. GRADY
JOHN E. SCHAPEKAHM
TIMOTHY R. KARASKIEWICZ
RICHARD H. BUSSLER, JR.
Principal Assistant
Corporation Counsel

TO: HONORABLE COMMITTEE ON JUDICIARY, SAFETY AND GENERAL SERVICES

FROM: WILLIAM J. DOMINA, CORPORATION COUNSEL

SUBJECT: MCAMLIS

DATE: APRIL 12, 2005

INTRODUCTION

An amendment to the budget narrative accompanying the County Executive's 2005 recommended budget included this provision:

Additionally, Corporation Counsel will review the MCAMLIS cooperative agreement, authorized in 1990, to assure that the authority granted to the MCAMLIS [Milwaukee County Automated Land Information Systems] Steering Committee is consistent with Milwaukee County interests, policies and ordinances, and will recommend changes to the agreement to the Committee on Judiciary Safety and General Services by March.

This report is submitted in response to that directive.

We have reviewed the cooperative agreement together with a variety of other documents pertaining to the MCAMLIS consortium. While the agreement is somewhat unusual in that it incorporates private corporate entities and municipal entities under a cooperative agreement which grants decision making authority to a "steering committee" comprised of representatives of public as well as private entities, we do not believe that the agreement violates any statute or ordinance. In fact, it appears that the agreement was consistent with the spirit of the legislation which largely inspired its creation and that the agreement received the imprimatur of the superintending state agency (the land information board). On the other hand, this consortium model is not required by any ordinance or statute, and is apparently unique to Milwaukee County.

With respect to the question of whether the cooperative agreement is "consistent with Milwaukee County interests [and] policies" and the direction that we "recommend changes to the agreement", these are policy issues which the county board must determine. In this report, we will summarize the history and the legal implications of the MCAMLIS cooperative agreement and to identify policy directions which the county board could pursue.

HISTORICAL BACKGROUND

The creation of MCAMLIS was driven by the adoption of 1989 Wis. Act 339. The Act increased the recording fees charged by the register of deeds, and created Wis. Stat. s. 59.88 (now, s. 59.72), which permitted a county to retain a portion of those fees for the purpose of "land record modernization" if certain conditions were satisfied:

1. The county has established a land information office under [s. 59.88] sub. 3
2. A land information office has been established for less than 2 years or has received approval for a countywide plan for land records modernization under sub. (3)(b).
3. The county uses the fees retained under this paragraph to develop, implement and maintain the countywide plan for land records modernization.

As explained in the July 19, 1990 memorandum of Walter Barczak, then the register of deeds, to the county board, the first condition was satisfied by the designation of the register of deeds as the county land information office (*see*, County Board File No. 89-747). The cooperative agreement among the County, the then-existing utilities (WEPCO, the Wisconsin Gas Co., Wisconsin Bell), and MMSD was presented to the county board as the "county wide plan for land records modernization" which would be presented to the state land information board for approval in order to fulfill the second enumerated condition.

Presumably with that understanding, in November, 1990, the county board approved the cooperative agreement which established MCAMLIS (County Board File No. 90-707). We assume that the state land information board approved that plan (although our file includes no documentation of that fact), because the recording fees referenced in the statute have been retained and expended on land record modernization projects, consistent with the provisions of the cooperative agreement. MCAMLIS has also received grants from the state land information program (WLIP).

The most recent document pertaining to Milwaukee County's land records modernization plan appearing in the land information board web site is the "Update to Land Records Modernization Plan: 1999". That submission includes this summary of the County's "plan", embodied in the cooperative agreement :

The Milwaukee County plan, as adopted by the County Board, is believed to be unique within Wisconsin in that it proposed the creation of a public-

private partnership that would jointly fund and develop the automated mapping system. Accordingly, a cooperative agreement was executed in November 1990, establishing the Milwaukee County Automated Mapping and Land Information System, known by the acronym MCAMLIS. Milwaukee County, the Milwaukee Metropolitan Sewerage District, Wisconsin Bell Telephone Company, the Wisconsin Electric Power Company, and the Wisconsin Gas Company all executed the agreement. The agreement provided for the creation of a Steering Committee with representatives from the County and City of Milwaukee, the suburban cities and villages within Milwaukee County, the Milwaukee Metropolitan Sewerage District, and the private utilities operating within the County. The agreement provided for funding of the plan implementation work. The cost of plan implementation was estimated at \$4.15 million, of which Milwaukee County was to provide one-half utilizing retained Register of deeds fees and grants from the Wisconsin Land Information Board as provided by then recently enacted State legislation. The Milwaukee Metropolitan Sewerage District, the Wisconsin Energy Corporation [sic – it was still WEPCO then] The Wisconsin Gas Company, and the Wisconsin Bell Telephone Company were to contribute the other one-half of the cost of the program, or approximately \$416,000 each. The program was to be completed over an approximately five year period beginning in 1991.

CURRENT STATUS AND CONSIDERATIONS FOR THE FUTURE

I. In view of the fact that that the private utility companies no longer contribute financially to MCAMLIS, it appears that a cooperative agreement which affords the utilities representation on the steering committee which determines MCAMLIS policy is no longer in Milwaukee County's interests.

During the period 1990 through 2000, the utilities which are party to the cooperative agreement contributed a total of \$2,080,000 to MCAMLIS revenues:

Year	Utility contributions
1990	\$312,000
1991	312,000
1992	312,000
1993	362,000
1994	362,000
1995	50,000
1996	50,000
1997	50,000
1998	50,000
1999	50,000
2000	170,000

However, since 2000 they have contributed nothing toward MCAMLIS revenue, and there is no reasonable prospect that there will be any contributions in the future.¹ Moreover, according to a staff report prepared for a MCAMLIS meeting in 2004, the initial investment of the utilities in the MCAMLIS venture has a shelf-life that is expiring. Therefore, we raise issue with whether the current partnership structure, under which the utilities retain the power to affect policy and expenditure decisions, serves the best interests of the County.

Attached to this memorandum, as an example of the alternative administrative structures which the county board may wish to consider, is a proposed Milwaukee County governance model which was prepared by Milwaukee County staff and included in a report prepared by consultants retained by the Department of Parks and Public Infrastructure.

II. There is no legal impediment to terminating the cooperative agreement and managing Milwaukee County's land information modernization effort internally.

The legislature has amended Wis. Stat. s. 59.72 (formerly, s. 59.88), the statute governing the County's use of retained register of deeds recording fees for land record modernization. In particular, subsec. (5) has been amended to eliminate the requirement to submit a plan for land record modernization to the state land information board for approval. The state land information board itself will cease to exist because Wis. Stat. s. 16.967 is repealed. Effective July 1, 2005, Wis. Stat. s. 59.72(5) will provide that "[a] county which establishes a land information office shall use \$4 of the \$8 per page received under s. 59.43(2)(ag)1. and (e) to develop, implement, and maintain a countywide plan for land records modernization".

Therefore, the County could decide to use the retained recording fees to implement a land records modernization plan of its own design. It would not be necessary to obtain approval from the state to proceed with a different plan.

To proceed in that manner would, of course, require dissolution of MCAMLIS and termination of the cooperative agreement. The cooperative agreement does not include a termination date, nor does it include any provisions whereby a party to the agreement may withdraw from or terminate the agreement. Nevertheless, we believe that the decision of the county board to approve execution of the cooperative agreement cannot be interpreted to bind the County to that agreement in perpetuity. To the extent that the agreement is understood as a contract, any party may terminate it on reasonable prior notice other parties, *Oostburg State Bank v. United Savings and Loan Ass'n.*, 125 Wis. 2d 224, 234-235, 372 N.W.2d 471 (Ct. App. 1985) ("If a contract is silent as to duration, then either party may terminate it by giving reasonable notice to the other party of the

¹ It has been suggested that there is a potential for future private sector financial participation in County land information records projects through the Diggers' Hotline, which receives substantial support from the utilities. Appropriate staff should investigate this possibility.

intent to terminate.”) To the extent that the agreement is understood as an expression of policy within the ambit of the Board’s authority, it is subject to the general rule that “one [county] board cannot act in such a way as to tie the hands of a future board,” 61 Wis. Op. Att’y Gen 108, 109 (1972).

III. The county board should consider designating the architecture and engineering division as the “county land information office”, in lieu of the register of deeds.

This decision should be based on an analysis of which department is best equipped to perform the functions of the county land information office under Wis. Stat. s. 59.72(3). We have been advised that, with respect to participation in the technical aspects of land information projects undertaken by MCAMLIS, the architecture and engineering division has been primarily responsible for representing Milwaukee County on the steering committee. Other counties in this region (including Waukesha, Racine, and Walworth) have designated departments outside the register of deeds office as the land information office in those counties. In addition, we are advised that the locus of the County’s “tax listing” function is closely related to this issue and should be taken into account in designating the county land information office.

IV. Milwaukee County should resolve intellectual property issues affecting ownership of land information records created under the auspices of MCAMLIS.

If a decision is made to replace the current MCAMLIS structure, negotiation with the current partners would be appropriate to ensure an orderly transfer of administrative and program functions, and also to deal with intellectual property issues. In particular, under a licensing agreement executed in 1993, the MCAMLIS steering committee holds the copyright to the information and materials related to the automated mapping and land information system projects undertaken under the auspices of MCAMLIS, except that a subcommittee comprised of the private utility partners holds the copyright to those materials in digital form. The license agreement does not interfere with the ability of Milwaukee County to perform any governmental function which requires access to or use of those materials. The agreement grants Milwaukee County and the other partners an irrevocable and perpetual license to “use, reproduce, modify, perform and display” the materials. However, some provision should be made for ownership of this intellectual property in the event that the steering committee ceases to exist.

Minutes of the steering committee dating back to 2003 indicate that the utility members of the steering committee may be agreeable to surrendering their copyright, but that the telephone utility (now, SBC) could not obtain authorization from its corporate overseers. We recommend that, so long as the steering committee continues to exist, the Milwaukee County representatives continue to pursue a voluntary resolution of this copyright issue. Eventually, it may be necessary to authorize the Corporation Counsel to analyze the validity and breadth of the existing licensing agreements and to recommend an

appropriate course of legal action. This analysis may require the retention of outside advisors with expertise in intellectual property law.

V. “Smart growth” legislation does not, in our opinion, have a significant impact on the direction of Milwaukee County’s land records modernization program.

We discuss this collateral issue only because MCAMLIS reports frequently refer to the “comprehensive planning” requirements of Wis. Stat. s. 66.1001 (colloquially referred to as “smart growth” legislation). Although there may be, as suggested in the reports, some overlap between land records modernization efforts under Wis. Stat. s. 59.72 and the comprehensive planning which is encouraged by Wis. Stat. s. 66.1001, we are not persuaded that this is a significant policy issue for Milwaukee County.

Wis. Stat. s. 66.1001 provides a framework for developing comprehensive plans by municipalities and counties. The statute does not mandate the adoption of a comprehensive plan, but it states that, beginning January 1, 2010, any of six enumerated types of zoning and other land use actions taken by a local government must be consistent with that government’s comprehensive plan.

It is not clear what impact, if any, this legislation has on Milwaukee County. For counties, the “comprehensive plan” is defined to mean “a development plan that is prepared or amended under [Wis. Stat.] s. 59.69(2) or (3).” Wis. Stat. s. 59.69 describes a county’s planning and zoning authority. Milwaukee County has no zoning committee and does not exercise any zoning authority because, under that statute, a county’s zoning authority extends only to “areas within [a] county outside the limits of incorporated villages and cities.” Similarly, the “county development plan” described in Wis. Stat. s. 59.69(3) is supposed to cover “the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county’s development plan.” There are no such areas in Milwaukee County. Moreover, Milwaukee County does not, so far as we are aware, perform any of the zoning or regulatory functions which, under Wis. Stats. 66.1001(3), would be required to conform to a comprehensive plan.²

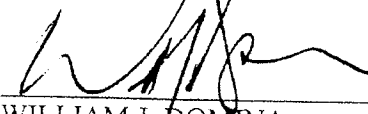
CONCLUSION

Recent MCAMLIS staff reports identify programmatic and political considerations which are relevant to a decision whether to continue the MCAMLIS “public-private partnership” under the existing cooperative agreement. Those considerations are primarily and technical and political. We do, however, believe that there is no legal impediment which would prevent the County from terminating the MCAMLIS partnership in favor of a purely Milwaukee County governance plan or a different

² It has been suggested that Milwaukee County has some authority, through the agency of the parks department, to participate in the approval process for subdivision plats.

intergovernmental partnership model. We have also offered our views where they might be helpful to the county board on collateral issues which are likely to come up as the board determines the best course for the future of Milwaukee County's land information records modernization program. Other and more specific questions will likely arise as the board proceeds to formulate policy on this important matter, and we will be pleased to respond to county board requests for further advice and assistance as the need arises.

Respectfully submitted:



WILLIAM J. DOMINA
Corporation Counsel

NOV 8 1990

Adopted
24-0

File No. 90-707(a)(a)

(Journal, September 6, 1990)

(ITEM 8) From the Register of Deeds and the Utilities, submitting a Land Record Modernization Funding report pursuant to the 1989 Wisconsin Act 339, by recommending adoption of the following resolution:

WHEREAS, on June 16, 1988, the County Board established a special study committee made up of representatives of the Southeastern Wisconsin Regional Planning Commission (SEWRPC), the City of Milwaukee, the suburbs, the County, the Metro/Sewerage District, Wisconsin Electric Power Co., Wisconsin Gas Co. and Wisconsin Bell) to examine the feasibility of and develop a plan for the computerization of County land records; and

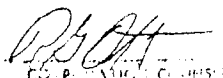
WHEREAS, this Study Committee's final report, submitted in October 1989, recommended the establishment of an automated mapping and land information system within the County and to be jointly financed by County government and the utility companies; and

WHEREAS, the 1989 Wisconsin Act 339, Land Records Modernization Program, which included provisions to increase real estate recording fees and allocate them to counties and the State to fund land records modernization programs; and

WHEREAS, the increase in recording fees authorized under Wisconsin Act 339 was instituted on July 1, 1990 and should provide funding to implement the recommendations of the Milwaukee County Study Committee; and

WHEREAS, the Milwaukee County Register of Deeds is in agreement with the proposed cooperative agreement with the Utilities to establish an automated mapping and land information system which was submitted for approval to the Judiciary and Finance Committees; and

APPROVED AS FOLLOWS


COUNTY BOARD MEMBER

...this revised cooperative agreement was amended to include a stipulation that the County contribution into an appropriate dedicated account shall consist solely of the retained revenues specified in 1989 Wis. Act 339 and revenues from the Utilities, and that no tax levy dollars shall be deposited therein; now, therefore,

BE IT RESOLVED, that the Milwaukee County Board of Supervisors does hereby approve the execution of the proposed cooperative agreement between the Utilities and Milwaukee County for establishing a Milwaukee County Automated Mapping and Land Information System to be executed by the Register of Deeds and Director of Department of Administration. An appropriate dedicated account to fund this project shall consist solely of the retained revenues specified in 1989 Wis. Act 339, and the Utilities's contribution, and that the County is not required to provide any tax levy dollars to fund its implementation; and

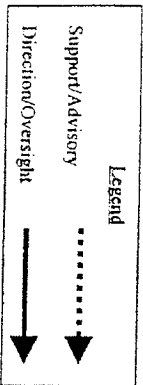
BE IT FURTHER RESOLVED that all reasonable and necessary expenditures authorized by the Steering Committee of the Milwaukee County Automated Mapping and Land Information System shall be approved by the Director of Department of Administration; and

BE IT FURTHER RESOLVED that this resolution shall supersede all previous resolutions (File NO.89-747 and 90-707).

FISCAL NOTE: The adoption of this resolution will not result in an increase in expenditures of Milwaukee County Tax Levy dollars.

Milwaukee County Land Information Program Governance Structure

Draft 2
June 28, 2004



Milwaukee County Land Information Program Committee

Membership:

- Various County Department Heads or their designees (DAS, DPP)
- Elected County Officers or their designees (County Board Supervisor, Register of Deed's, Sheriff)
- Appointed Members (Faculty Member - UWM/Marquette, 2 Private Citizens)

Roles/Responsibilities:

- Policy formulation and advice to County Executive's Office
- Set program priorities
- Program budget approval
- Project oversight
- GIS program sponsorship and leadership
- Fiscal/Budgetary Responsibilities:
- Overall expenditure authority of Land Record Modernization retained fees pursuant Section 59.72 of Wisconsin Statutes

Municipal/Utility Sub-Committee

Membership:

Municipal and Utility Representatives

Roles/Responsibilities:

- Meets limited number of times each year to help direct future Land Information projects

Centralized Land Information (GIS) Section (Office)

Roles/Responsibilities:

- Overall County Land Information Program Management
- Management of County's GIS IT infrastructure (ArcSDE Database, ArcIMS Web Server)
- Develop and Maintain County enterprise GIS IT applications and services.
- Contract management for Land Information projects (digital cadastral, topographic, orthophotography and other mapping layers)
- Contract management for creation and Maintenance of core County land information Datasets
- Contract management County Surveyor services
- Distribute County Data in accordance with License Agreements
- Technical standards research, formulation, and recommendations
- Policy research, formulation, and recommendations
- Program budget recommendations

GIS Technical Group

Membership:

Department GIS Technicians, IMSD

Roles/Responsibilities:

- Discuss Technical Issues
- Make recommendations for future GIS infrastructure improvements and enterprise applications